TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~364~~ 161

THADDEUS WILLIAMS, PLAINTIFF IN ERROR,

vs.

ANNA T. E. KIRTLAND.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED DECEMBER 9, 1870.

SUPREME COURT OF THE UNITED STATES.

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1 UNITED STATES OF AMERICA:

The President of the United States of America to the judges of the circuit court of the United States in and for the State of Minnesota, greeting:

Because in the record and proceedings, and also in the rendition of the judgment in a suit before you, or some of you, between Anna T. E. Kirtland, plaintiff, and Thaddeus Williams, defendant, in a plea which in the said circuit court is, manifest error hath happened, to the great damage of the said Thaddeus Williams, as he says; and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly & openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States of America, together with this writ, so that you have the same at Washington on the first Monday in December next, in the said Supreme Court, to be then and there held, that the records and proceedings, being then inspected, the said Supreme Court may cause further to be done therein to correct that error which of right and according to the law and custom of the United States should be done.

2 Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at St. Paul, in said district of Minnesota, this 22d day of October, A. D. 1870.

[SEAL.] H. E. MANN,
Clerk U. S. Circuit Court, Dist. of Minnesota.

JOHN B. BRISBIN,
Att'y of Pl'ff in Error.

The answer of the judges of the circuit court of the United States for the district of Minnesota, in the within writ mentioned:

The record and proceedings whereof mention is within made, with all things concerning the same, are hereby respectfully certified to the judges of the Supreme Court of the United States, within mentioned, in a certain schedule to this writ annexed, as within it is commanded.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at St. Paul, in the district of Minnesota, this fifth day of November, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the United States the ninety-fifth.

[SEAL.] H. E. MANN,
Clerk U. S. Circuit Court for the District of Minnesota.

3 (Indorsed:) United States circuit court of Minnesota. Thaddeus Williams, pl'ff in error, vs. Anna T. E. Kirtland, def't in error. Writ of error. Filed Oct. 22, 1870. H. E. Mann, clerk. John B. Brisbin, for pl'ff in error.

4 UNITED STATES OF AMERICA, *ss:*

To ANNA T. E. KIRTLAND, greeting:

You are hereby cited and admonished to be and appear *to be and appear* at a Supreme Court of the United States to be holden at Wash-

ington, in the District of Columbia, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eighth circuit, and district of Minnesota, wherein Thaddeus Williams is plaintiff in error, and Anna T. E. Kirtland is defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 22d day of October, A. D., 1870.

R. R. NELSON,
Judge of the Dist. Court of the United States for the Dist. of Minnesota.

JOHN B. BRISBIN,
Att'y for Pl'ff in Error.

5 DISTRICT OF MINNESOTA, *ss:*

On this third day of November, in the year of our Lord one thousand eight hundred and seventy, personally appeared E. C. Palmer before me, the subscriber, and he, the said E. C. Palmer, makes oath that, on said November 3d, A. D. 1870, at St. Paul, within said district, he delivered a true copy of the within citation to Lorenzo, Allis, esq., who was and is the attorney of record of and for the within-named defendant in error in the within-entitled action.

E. C. PALMER.

Subscribed & sworn to before me this 3d day of November, 1870.
[SEAL.] H. E. MANN, *Clerk.*

(Indorsed:) United States circuit court, district of Minnesota. Thaddeus Williams, pl'ff in error, vs. Anna T. E. Kirtland, def't in error. Citation. Filed October 22, 1870. H. E. Mann, clerk. Proof of service indorsed Nov. 3d, 1870. H. E. Mann, clerk. John B. Brisbin, att'y for pl'ff in error.

6 *Schedule referred to in writ of error attached.*

Circuit court of the United States for the district of Minnesota.

ANNA T. E. KIRTLAND
vs.
THADDEUS WILLIAMS.

Pleas before the honorable the judges of the circuit court of the United States of America for the district of Minnesota, of the 19th day of April, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States of America the eighty-eighth year.

DISTRICT OF MINNESOTA, *ss:*

Be it remembered that, on this 19th day of April, in the year of our Lord one thousand eight hundred and sixty-four, came Anna T. E. Kirtland, by Lorenzo Allis, her attorney, and filed in the clerk's office of said court her declaration and notice to plead; which declaration and notice to plead are in the words and figures following, viz:

Circuit court of the United States for the district of Minnesota.

Of the nineteenth day of April, in the year of our Lord one thousand eight hundred and sixty-four:

7 DISTRICT OF MINNESOTA, *ss:*

Anna T. E. Kirtland, plaintiff, who is a citizen of the State of New Jersey, by Lorenzo Allis, her attorney, complains of Thaddeus Williams, defendant, in this suit, who is a citizen of the State of Minnesota.

For that, whereas the said Anna T. E. Kirtland, on the sixteenth day of February, in the year of our Lord one thousand eight hundred and sixty-four, was possessed of all that tract, or parcel of land, with the appurtenances situate in the district aforesaid, and described as follows, to wit: Lot number four, (4,) in block number twenty-eight, (28,) in Rice and Irvine's addition to St. Paul, according to the plat thereof in the office of the register of deeds for the county of Ramsey, in the State of Minnesota, which said psemises the said Anna T. E. Kirtland claims in fee, and which are of the value of over two thousand dollars; and she, the said Anna T. E. Kirtland, being so possessed thereof, the said Thaddeus Williams afterwards, to wit, on the seventeenth day of February, in the year of our Lord one thousand eight hundred and sixty-four, entered into the said premises, and ejected the said Anna T. E. Kirtland therefrom, and unjustly withholds from the said Anna T. E. Kirtland the possession thereof, to the damage of the said Anna T. E. Kirtland of two thousand dollars, and therefore she brings her suit, &c.

LORENZO ALLIS,
Attorney for Plaintiff.

[U. S. revenue stamp, 50 cents, cancelled.]

8 To THADDEUS WILLIAMS, the defendant aforesaid:

You are hereby notified that the declaration, with a copy whereof you are now herewith served, and to which copy this notice is subjoined, will be filed on the nineteenth day of April, instant, and that upon filing the same a rule will be entered requiring you to appear and plead to the said declaration within twenty days after the entry of such rule, and that if you neglect so to appear and plead, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises specified in the said declaration.

Dated this 16th day of April, A. D. 1864.

Yours, &c.,

LORENZO ALLIS,
Attorney for Plaintiff.

Which declaration and notice were indorsed by the marshal of the district of Minnesota, as follows, to wit:

DISTRICT OF MINNESOTA, *ss:*

I hereby certify that, on the 16th day of April, A. D. 1864, at the city of Saint Paul, in the State of Minnesota, I personally served Thaddeus Williams, the defendant in this suit, who is the actual occupant of the premises for which this action is brought, with a true copy of the declara-

tion hereto annexed, and also a true copy of the notice, in writing, to the said declaration subjoined and likewise hereto annexed.

CHA'S EATON,
U. S. Marshal.

9 By SAM'L McCONNELL,
Special Deputy.

Service $2 00; *travel* 12—$2 12.

And afterwards, to wit, on the 19th day of April, in the year of our Lord one thousand eight hundred and sixty-four, came the said plaintiff, by Lorenzo Allis, her attorney, and entered in the common rule-book of said court, her rule to plead, in the words and figures following, to wit:

ANNA T. E. KIRTLAND
vs.
THADDEUS WILLIAMS.

Of the 19th day of April, A. D. 1864.—LORENZO ALLIS, *Pl'ff's Att'y.*

In this cause the declaration having been duly returned, personally served, and the defendant having entered no appearance, on motion of Lorenzo Allis, attorney for plaintiff, ordered that the defendant herein plead to the plaintiff's declaration on file in twenty days after the entry of this rule, or be defaulted.

And afterwards, to wit, on the ninth day of May, in the year of our Lord one thousand eight hundred and sixty-four, came the said defendant, by W'm Sprigg Hall, his attorney, and filed his plea to the plaintiff's declaration on file, in the words and figures following, to wit:

10 Circuit court of the United States for the district of Minnesota.

Of the nineteenth day of April, in the year of our Lord one thousand eight hundred and sixty-four.

ANNA T. E. KIRTLAND
vs.
THADDEUS WILLIAMS.

DISTRICT OF MINNESOTA, *ss:*

And now the said defendant, Thaddeus Williams, by W'm Sprigg Hall, his attorney, comes and defends the force and injury, when, &c., and says he is not guilty of the said supposed trespass and ejectment in the declaration in this action laid to his charge, or of any part thereof, in manner and form as the said plaintiff has, in his said declaration thereof, complained against him; and of this he, the said Thaddeus Williams, defendant, puts himself upon the country, &c.

W'M SPRIGG HALL,
Attorney for Defendant.

And afterwards, to wit, at a stated term of said court, begun and held at the city of Saint Paul, in said district, on the third Monday, being the 16th day of October, in the year of our Lord one thousand eight hundred and sixty-five, on the third day of said term the following proceeding, among others, was had, to wit:

11 ANNA T. E. KIRTLAND } Ejectment.
vs.
THADDEUS WILLIAMS. }

And now come the parties to this cause, by their attorneys, and a jury being called, came also, to wit: Joseph Lewis, C. T. Brown, D. M. West, J. Webb, E. L. Larpenteur, Truman M. Chase, A. Lasher, S. J. Petit, J. F. Geere, W. McKusick, Jno. Matthias, Jno. R. Irvine, who, being duly impannelled and sworn the truth to speak, upon the issues joined between the parties, *upon the issues joined between the parties*, upon their oaths do say that the said Thaddeus Williams is guilty of the trespass and ejectment laid to his charge, in manner and form as the said Anna T. E. Kirtland hath complained against him.

Therefore it is considered that the said Anna T. E. Kirtland do recover against the said Thaddeus Williams, the possession of the premises in said plaintiff's declaration described, to wit: Lot number four, (4,) in block number twenty-eight, (28,) in Rice & Irvine's addition to Saint Paul, according to the plat thereof on record in the office of the register of deeds for the county of Ramsey and State of Minnesota, (said premises lying and being in said State and county,) according to the verdict of said jury.

12 And it is further considered that the said Anna T. E. Kirtland do recover against the said Thaddeus Williams, the sum of thirty-three dollars and twenty-two cents for her costs by her in and about her suit in this behalf expended; and that due process issue out of this court for the enforcement of this judgment.

And afterwards, to wit, on the 26th day of October, in the year of our Lord one thousand eight hundred and sixty-five, the defendant, by his attorneys, W'm Sprigg Hall and Messrs. Brisbin & Warner, presented his bill of exceptions, which was duly settled & allowed by said court, and signed and sealed by one of the judges thereof, and is in the words and figures following, to wit:

Circuit court of the United States for the district of Minnesota.

ANNA T. E. KIRTLAND }
vs.
THADDEUS WILLIAMS. }

This was ejectment. The declaration, with notice to plead, was served on the 16th April, 1864, and filed the 19th April, 1864. The plea was filed May 9th, 1864. Afterwards, at the October term of this court, on the 19th day of October, 1865, his honor, Judge Nelson, presiding, a jury was impannelled and sworn, and the issue so joined was tried.

The plaintiff, to maintain the issue upon his part, offered in evidence a deed, with the certificate of its registration, which is in the
13 words and figures of schedule, marked "A," hereto annexed and forming a part hereof.

It was stipulated and agreed in writing, produced and read to the jury, that the defendant, at the commencement of this action, was in the possession of the premises described in the declaration under a lease from Alexander C. Jones and Ella C. Jones, his wife; that the said property was, by Alexander C. Jones and Ella C. Jones, then owners thereof, conveyed to one W'm B. Gere, on the 24th day of October,

1858, and, on the same day, conveyed by said W'm B. Gere to said Ella C. Jones, and no transfer thereof from her was shown.

The counsel for the defendant requested the court to instruct the jury—

First. The deed from W'm H. Forbes, having been made pursuant to section 5 of the act of the legislature of the State of Minnesota, entitled "An act in relation to the redemption of lands sold for taxes, and relating to taxes and tax sales," the plaintiff must show that the antecedent provisions of the law have been complied with.

Second. The plaintiff, claiming under the Forbes deed, must show that the taxes, for which the sale was made, were regularly assessed.

Third. The act of 1862, cited supra, directing that the sales thereunder shall take place on the second Monday of January, 1863;
14 and the deed showing (if it shows anything) that the sale was on the 11th day of February, 1863. The plaintiff must show that the sale was adjourned in compliance with the statute.

Fourth. The Forbes deed, not being stamped in accordance with the act of Congress in such case provided, is invalid and passes nothing.

The court then and there refused to charge each and every of the said several matters requested, and did instruct the jury, in connection with the first request, that the said Forbes deed, under section 5 of the said act of 1862, vested an absolute title in the plaintiff, which could not be questioned by the defendant, inasmuch as one year had elapsed from the date of the registration of the said deed; also, in connection with the fourth request, that the said deed required no stamp to make it valid as a conveyance to entitle it to record or make it admissible in evidence.

To each of which refusals to charge, and to every portion singular of the charge given, the defendant, by his counsel, then and there duly excepted.

And the said judge, under the charge and with the directions aforesaid, left the aforesaid issue and evidence so given on the trial thereof, as aforesaid, to the said jury; and the said jury, on the 19th day of October, 1865, gave their verdict for the plaintiff and against the defendant.

The defendant had leave to make a bill of exceptions.

Settled and allowed Oct. 26, 1865.

R. R. NELSON, [SEAL.]
Judge, &c.

15 SCHEDULE "A."

Know all men by these presents, that whereas, the treasurer of the county of Ramsey, in the State of Minnesota, did, on the eleventh day of February, one thousand eight hundred and sixty-three, at the county auditor's office in the city of Saint Paul, in said county, in conformity with all the requisitions of the several acts in such case made and provided, expose to public sale, as forfeited to the State under the provisions of law, a certain tract of land described as follows, to wit: Lot number four, (4,) in block number twenty-eight, (28,) of Rice & Irvine's addition to Saint Paul, for the sum of three hundred and thirty-seven & $\frac{80}{100}$ dollars, being the amount of taxes for the years 1853, 1854, 1855, 1856, 1857, 1859, 1860, & 1861, with interest and costs chargable on said tract of land; and whereas, the county commissioners of said county did previously direct said tract to be sold for an amount less than the taxes and costs due thereon; and whereas, at the time and place afore-

said, Anna T. E. Kirtland offered to pay the sum of one hundred and eighty-six & $\frac{62}{100}$ dollars for said tract of land, that being the highest price and she being the highest bidder for the same, and the said Anna T. E. Kirtland has paid the said sum to the treasurer aforesaid, and said tract was stricken off to her at that price; and whereas, it appears that the certificate of said purchase has not been as-
16 signed by the said Anna T. E. Kirtland to any person; and whereas, said property is still unredeemed:

Now, therefore, W'm H. Forbes, auditor of said Ramsey County, for and in consideration of said sum of one hundred & eighty-six $\frac{62}{100}$ dollars paid to the treasurer of said county at the time of said sale, and by virtue of the statute in such case made and provided, have granted, bargained, & sold, and by these presents do grant, bargain, and sell unto the said Anna T. E. Kirtland, her heirs and assigns, the following-described piece or parcel of land situate in said county, to wit: Lot number four, (4,) in block number twenty-eight, (28,) of Rice & Irvine's addition to St. Paul, to have and to hold unto her, the said Anna T. E. Kirtland, her heirs and assigns forever; subject, however, to all the rights of redemption provided by law, and to all unpaid taxes and charges which are a lien thereon.

In witness whereof I, William H. Forbes, auditor as aforesaid, by virtue of the authority aforesaid, have hereunto subscribed my name and affixed my seal this twelfth day of February, A. D. 1864.

[OFFICIAL SEAL.] W. H. FORBES, [SEAL.]
Auditor of Ramsey County.

In presence of—
ISAAC F. CONWAY.
ALBERT H. MERRICK.

STATE OF MINNESOTA, *County of Ramsey:*

17 On this twelfth day of February, A. D. 1864, before me personally came William H. Forbes, auditor of the county of Ramsey, and State of Minnesota, to me personally known to be the identical person who executed the foregoing conveyance and acknowledged that he executed the same as his free act and deed.

Witness my hand and official seal the day and year above written.

[SEAL NOTARIAL.] ISAAC H. CONWAY,
Notary Public.

STATE OF MINNESOTA, *County of Ramsey, ss:*

I hereby certify that the within deed was filed in this office for record on the 13th day of February, A. D. 1864, at 12 o'clock m., and was duly recorded in book C C of deeds, on pages 582 & 583.

CHA'S PASSAVANT,
Register of Deeds, Ramsey County.

18 And afterwards, to wit, on the 23d day of April, A. D. 1866, came the said defendant, by W'm Sprigg Hall, esq., and Messrs. Brisbin and Warner, her attorneys, and paid into court the sum of thirty-six dollars and seventy-four cents, the amount of the foregoing judgment and interest thereon, which was received by Lorenzo Allis, esq., the attorney for the plaintiff.

And afterwards, to wit, on the 22nd day of June, A. D. 1866, came the said defendant, by his said attorneys, and filed in the clerk's office of said

court his written demand for another trial in said cause, which written demand is in the words and figures following, to wit:

In the circuit court of the United States in and for the district of Minnesota.

ANNA T. KIRTLAND
vs.
THADDEUS WILLIAMS. } LORENZO ALLIS, *Plff's Att'y.*

The defendant in this cause has paid all the costs and damages recovered thereby, and hereby demands another trial of said cause.

And you will also take notice that the issues therein will be brought on for trial at the next general term of said court to be held at St. Paul, in said district, on the 18th day of June, A. D. 1866, at the opening of court that day, or so soon after as we can be heard.

Yours, &c.

19

W. SPRIGG HALL,
BRISBIN & WARNER,
Def'ts Attorneys.

On the back of which notice was indorsed the following admission of service, to wit:

Received a copy of the within this 24th day of April, A. D. 1866.
LORENZO ALLIS.

And afterwards, to wit, on the 22nd day of June in the year of our Lord one thousand eight hundred and sixty-six, came the said parties by their said attorneys and filed in the clerk's office of said court their stipulation in writing, in the words and figures following, viz:

U. S. C. court, Minnesota.

KIRTLAND
vs.
WILLIAMS.

It is agreed by the parties to this action to waive trial by jury and to try this case by the court, 22 June, 1866.

LORENZO ALLIS.
BRISBIN & WARNER & HALL.

And afterwards, to wit, at a stated term of said court begun and held at the city of Saint Paul, in said district, on the third Monday, being the 18th day of June in the year of our Lord one thousand eight hun-
20 dred and sixty-six, the following proceedings, among others, *was* had, to wit:

ANNA T. E. KIRTLAND
vs.
THADDEUS WILLIAMS. } Ejectment.

The respective parties appearing by their attorneys, waiving a jury trial, and stipulating in writing that the issues in this cause be tried and determined by the court, and this cause coming on to be again tried,

and after hearing and considering the proofs of the respective [illegible] the court find that the said defendant, Thaddeus Williams, is guilty of the trespass and ejectment laid to his charge in manner and form as the said Anna T. E. Kirtland has complained against him.

Therefore it is considered that the said Anna T. E. Kirtland do recover against the said Thaddeus Williams the possession of the said premises in the plaintiff's declaration described, to wit: Lot number four, (4), in block number twenty-eight, (28,) in Rice & Irvine's addition to Saint Paul, according to the plat thereof on record in the office of the register of deeds for the county of Ramsey, and State of Minnesota, said premises lying and being in said State and county, according to the finding of this court; and it is further considered that the said Anna T. E. Kirtland do recover of and from the said Thaddeus Williams her costs by her in and about her suit in this behalf expended to be taxed, and that due process or processes issue out of this court for the enforcement of this judgment.

21 And afterwards, to wit, on the 31st day of July came the said defendant, by his said attorneys, and filed in the clerk's office of said court his bill of exceptions duly signed and sealed, and in the words and figures following, to wit:

In the circuit court of the United States within and for the district of Minnesota.

ANNA T. E. KIRTLAND
vs.
THADDEUS WILLIAMS.

Be it remembered that, on the day of June, A. D. 1866, the issues in this cause came on for trial at a general term of said court, held at Saint Paul, in said district, before the judges without a jury, according to a stipulation of the parties in writing, on file at that time, and that, for the purpose of sustaining in part the said issues upon his part, the plaintiff in said cause offered in evidence a certain instrument purporting to be a tax deed, with the certificates thereto annexed, and said defendant, by his counsel, then objected to the reception thereof in evidence on the following grounds, viz:

There does not appear to have ever been any revenue stamp upon the deed or certificates as required by law.

The deed not purport to have been executed in the presence of two witnesses, and two persons do not appear to have subscribed their names to the same as such.

22 The deed does not recite facts sufficient to show that, under the laws of this State, the officer had any power to vest any title of the land in the plaintiff.

It recites a sale upon a day not authorized by any law of this State, and does not recite any adjournment of a sale to such day.

It is not a sufficient deed, because it does not afford any notice that a sale has been made under the act of March 11, A. D. 1862, so that the owner will be barred after one year.

The deed does not recite the sale within the intent of the act of March 11, A. D. 1862, and does not identify the land sold as the land conveyed. From the deed it appears that the premises were sold for taxes and penalties of the year 1860, 1861, 1862, which was unauthorized, and that, therefore, the sale and deed are void.

But such objection was by the court overruled, and to such ruling the defendant then and there duly excepted, whereupon such deed and certificates, of which copies are hereto attached, marked respectively "A," "B," & "C," were read in evidence, and plaintiff rested.

Thereupon the defendant, to maintain such issue upon his part, produced as a witness the treasurer of Ramsey County at the time of the sale mentioned in such deed, and offered to prove that the notice
23 of such sale was insufficient; but the plaintiff, by his counsel, objected to such proof on the ground that it was incompetent and immaterial, and such objection was sustained by the court, and thereupon said defendant duly excepted to such ruling and rested his case.

The court thereupon found that the plaintiff was entitled to judgment for the possession of said lands, by virtue of said tax deed.

And each and every of the exceptions taken by the said defendant as aforesaid, or on his behalf, were duly allowed by the court at the time the same were so taken.

In proof whereof I have hereunto set my hand and seal.

R. R. NELSON, [SEAL.]
U. S. Judge.

We consent that the above bill of exceptions may be signed nunc pro tunc, hereby waiving any objection to said bill on that ground.

LORENZO ALLIS, *Pl'ff's Att'y.*
BRISBIN & WARNER, *Resp. Att'y.*

"A."

Know all men by these presents that whereas, the treasurer of the county of Ramsey, in the State of Minnisota, did, on the 11th day of February, in the year one thousand eight hundred and sixty-three, at the county auditor's office, in the city of Saint Paul, in said county, in conformity with all the requisitions of the several acts in such
24 case made and provided, expose to public sale, as forfeited to the State, under the provisions of law, a certain tract of land described as follows, to wit: Lot number four, (4,) in block number twenty-eight, (28,) of Rice & Irvine's addition to Saint Paul, for the sum of three hundred thirty-seven & $\frac{85}{100}$ dollars, being the amount of taxes for the years 1853, 1854, 1855, 1856, 1857, 1858, 1859, 1860, & 1861, with the interest and cost chargable on said tract of land.

And, whereas, the county commissioners of said county did previously direct said tract to be sold for an amount less than the taxes and costs due thereon.

And whereas, at the time and place aforesaid, Anna T. E. Kirtland offered to pay the sum of one hundred and eighty-six and $\frac{62}{100}$ dollars for said tract of land, that being the highest price, and she being the highest bidder for the same, and the said Anna T. E. Kirtland has paid the said sum to the treasurer aforesaid, and said tract was stricken off to her at that price.

And, whereas, it appears that the certificate of said purchase has not been assigned by the said Anna T. E. Kirtland to any person, and whereas, said property is still unredeemed:

Now, therefore, William H. Forbes, auditor of said county of Ramsey, for and in consideration of said sum of one hundred and eighty-six & $\frac{62}{100}$ dollars, paid to the treasurer of said county at the time of the aforesaid sale, and by virtue of the statute in such case made and
25 provided, have granted, bargained, and sold, and by these pres-

ents do grant, bargain, and sell unto the said Anna T. E. Kirtland, her heirs and assigns, the following-described piece or parcel of land situate in said county, to wit: Lot numbered four, (4,) in block numbered twenty-eight, (28,) of Rice and Irvine's addition to Saint Paul: To have and to hold unto her, the said Anna T. E. Kirtland, her heirs and assigns forever, subject, however, to all the rights of redemption provided by law, and to all unpaid taxes and charges which are a lien thereon.

In witness whereof I, William H. Forbes, auditor as aforesaid, by virtue of the authority aforesaid, have hereunto subscribed my name, and affixed my seal this twelfth day of February, A. D. 1864.

{ COUNTY AUDITOR'S SEAL. } W'M H. FORBES, [SEAL.]
Auditor of Ramsey Co.

In presence of
ISAAC H. CONWAY.
ALBERT H. MERRICK.

"B."

STATE OF MINNESOTA, *County of Ramsey, ss:*

On this 12th day of February, A. D. 1864, before me personally appeared William H. Forbes, auditor of the county of Ramsey, and State of Minnesota, to me personally known to be the identical person who executed the foregoing conveyance, and acknowledged that he executed the same as his free act and deed.

26 Witness my hand and official seal the day and year above written.

[NOTARIAL SEAL.] ISAAC H. CONWAY,
Notary Public.

"C."

(Indorsed:) Tax deed from the auditor of Ramsey County to Anna T. E. Kirtland.

STATE OF MIN., *Co. of Ramsey, ss:*

I hereby certify that the within deed was filed in this office for record on the 13th day of February, A. D. 1864, at 12 o'clock m., and was duly recorded in book C C of deeds, on pages 582 & 583.

[SEAL.] CHA'S PASSAVANT,
Register of Deeds of Ramsey Co.

And afterwards, to wit, on the twenty-first day of October, A. D. 1870, on application of said defendant, by Messrs. Brisbin and Palmer, his attorneys, to the Honorable Rensselaer R. Nelson, one of the judges of said court, at his chambers in the city of Saint Paul, in said district, an allowance of a writ of error was made in said cause, in the words and figures following, to wit;

United States circuit court, district of Minnesota.

ANNA T. E. KIRTLAND
ag'st
THADDEUS WILLIAMS.

27 And now, upon filing the security approved by me in this cause,

upon application of the defendant, the writ of error to the Supreme Court therein is hereby allowed.

Oct. 21, A. D. 1870.

R. R. NELSON,
U. S. Dist. Judge.

UNITED STATES OF AMERICA,
Circuit Court of the United States, District of Minnesota, ss:

I, H. E. Mann, clerk of said circuit court for the district of Minnesota, do hereby certify and return to the honorable the Supreme Court of the United States, that the foregoing is a full, true, and complete transcript of the records, process, pleadings, orders, final judgment, and all other proceedings in said cause; and also of the bills of exceptions filed therein, as appears from the original files and records of said court; and I do further certify and return that I have annexed to said transcript, and do hereby transmit therewith the original citation, together with the proof of service thereof.

In witness whereof I have hereunto set my hand and affixed the seal of the said court at Saint Paul, in the district aforesaid, this 5th day of November, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the United States the ninety-fifth year.

28 [SEAL.]

H. E. MANN,
Clerk U. S. Circuit Court, District of Minnesota.

(Indorsement on cover:) No. 364. Thaddeus Williams, plaintiff in error, vs. Anna T. E. Kirtland. Minnesota C. C. U. S. Filed 9th December, 1870. Anna T. E. Kirtland vs. Thaddeus Williams. Return to writ of error.

SUPREME COURT

OF THE

UNITED STATES.

No. 164.

DECEMBER TERM, 1871.

THADDEUS WILLIAMS,
PLAINTIFF IN ERROR,

vs.

ANNA T. E. KIRTLAND,
DEFENDANT IN ERROR.

Error to the Circuit Court of the United States for the District of Minnesota.

BRIEF OF PLAINTIFF IN ERROR.

JOHN B. BRISBIN,
E. C. PALMER,
Counsel for Plaintiff in Error.

SUPREME COURT

OF THE

UNITED STATES.

DECEMBER TERM, 1871.

THADDEUS WILLIAMS, Plaintiff in Error,

Against

ANNA T. E. KIRTLAND, Defendant in Error.

STATEMENT OF THE CASE:

The plaintiff below, claiming under a tax title, brought ejectment against the defendant below, who was tenant of the owner, a married woman, to obtain possession of certain premises situated in the city of St. Paul and State of Minnesota.

The action was commenced, and issue joined in April, 1864.

On the trial the tax deed was introduced in evidence against objection, to establish the plaintiff's title, and was

held to have that effect by the court below. A bill of exceptions was tendered and allowed which is found in the record.

A second trial was had, the same deed offered, the same ruling made with like result.

On this trial, however, the defendant offered to prove that the tax deed was invalid by reasons of defects in the proceedings of the taxing officers.

The Court below rejected this evidence on the ground that by the act of 1862, of the Legislature of Minnesota, hereafter quoted at length, such deed could not be attacked except in an action brought for that purpose and commenced within the time limited by that statute.

Judgment was therefore rendered for the plaintiff, a second bill of exceptions made and settled, which may be found in the record, and the case is brought here for review by writ of error.

The act of 1862 is as follows:

CHAPTER IV.

"An act in relation to the redemption of lands sold for taxes, and relating to taxes and tax sales.

Be it enacted by the Legislature of the State of Minnesota.

SEC. 1. That all lands heretofore sold for taxes of the year 1859 and all previous years, and which lands have been purchased and are held by any city or county, or forfeited to the State, or where the certificate of tax sale of any such lands are held by any city or county of this State, or wherever any delinquent tax is now due any such city, or the State for the time aforesaid, shall be subject to be redeemed by the owner or owners of such lands by complying with the following terms and conditions, to wit: by

paying to the proper officer the amount of the delinquent taxes, due and unpaid with interest thereon at the rate of seven per cent. a year and costs, on or before the first day of November, 1862. *Provided*, That all taxes assessed on such lands since January first, 1859, shall be paid with costs and interest.

SEC. 2. That if any such tract or parcel of land or structure thereon, shall remain unredeemed or such delinquent taxes shall remain unpaid on said first day of November, 1862, such lands so unredeemed, and upon which such delinquent taxes remain in whole or in part unpaid, shall at said last named date become forfeited to the State; and it shall thereupon become the duty of the county auditor to advertise the same for sale, therein stating that such lands will be sold as forfeited to the State under the provisions of this act and the time and place of sale, which time shall be on the second Monday in January, 1863. The said notice shall be published once in each week for at least three weeks from the time of the first publication thereof, in some newspaper printed and published in his county, and if no newspaper be so printed in the county, then in a newspaper printed in an adjoining county, and if no newspaper be printed in an adjoining county, then in some newspaper printed and published at the seat of government of this State; such sale shall be publicly made at the office of the county auditor by the county treasurer, the auditor to act as clerk and to keep a record thereof.

SEC. 3. That the premises so to be sold shall be offered for sale, each tract and parcel separately and in the order appearing in said notice and sold to the highest bidder therefor, in money or in orders corresponding with the various funds making up the taxes charged on such premises, for an amount not less than the amount for which by

the provisions of this act such lands might have been redeemed, the surplus money, if any, realized upon any such sale, to be paid over to the party owning such parcel at the time of such forfeiture thereof to the State. In case any tract, lot or parcel, shall remain unsold for want of bidders or otherwise, the same may be re-offered and sold as hereinbefore provided, and such sale may be adjourned, if necessary, from time to time without further notice until all such forfeited lands shall be sold. *Provided, however,* That no sale shall be made to the county or otherwise than for money or United States treasury notes, or in orders corresponding with the various funds making up the taxes charged on such premises.

In case the county commissioners shall deem it to be the public interest to have any tract or parcel sold for less than the amount provided for in section three of this act, they may so direct, and thereupon such tract may be sold to the highest bidder without restriction as to price. And they shall have full power in any case when in their judgment the amount of taxes assessed upon any tract or parcel of property is manifestly greater than ought to have been assessed thereon, to make such abatement therefrom as may in their judgment be best, such abatement to be made, if any, on or before the first day of November next.

Sec. 4. That certificates of sale shall be made by the County Auditor containing a pertinent description of the tract or parcel so sold; the amount for which it is sold and the name of the purchaser thereof, to be delivered to the purchaser upon receiving, in addition to the amount of the sale, a fee of twenty cents for each certificate; in case where more than one tract is purchased by the same person, such certificate to contain all such tracts without extra charge therefor.

Where the property upon which an abatement is sought to be made is situated within any incorporated city, the County Commissioners and members of the City Council of said city shall constitute a Board to determine the same and, a majority of the whole number of said Board shall be necessary in order to authorize such abatement.

SEC. 5. It shall be the duty of the County Auditor, making such sale, or his successor in office, upon the production and return of the certificate of sale, to make, execute and deliver to the purchaser in such certificate named or his assignee, a deed in fee simple for the premises so sold, embracing therein such description of the premises sold in addition to that in the certificate, as may be necessary to describe or fully identify the premises so sold, and reciting in such deed, such sale, and the fact that said property is unredeemed. Such deed shall vest in the grantee therein, an absolute title, both at law and equity, except in cases where the tax returned delinquent, shall have been actually paid.

SEC. 6. That any person owning or claiming any right, title or interest in or to any land or premises so to be sold under the provisions of this act, shall, on or before the day of the sale thereof, commence an action for the purpose of testing the validity of the assessment of the taxes thereon, or in any manner questioning the regularity or validity thereof, or otherwise asserting his right, interest or claim thereto, or be forever barred in the premises, except in cases where the tax returned delinquent shall have been actually paid; and the treasurer of the proper county may be made a defendant in any such action and shall have full power to defend the same.

SEC. 7. That any person or persons having or claiming any right, title or interest in or to any land or premises after a sale under the provisions of this act adverse to the

title or claim of the purchaser, at any such tax sale, his heirs or assigns shall within one year from the time of the recording of the tax deed for such premises, commence an action for the purposes of testing the validity of such sale, or be forever barred in the premises.

SEC. 8. That in case the title of any such purchaser, at such sale, shall be adjudged invalid, such purchaser shall have and retain the lien of the State upon the premises so charged with the taxes named in the first section of this act to the amount of his purchase money with interest thereon at the rate of fifteen per centum per annum, which lien may be enforced by action, or required by the Court to be paid before awarding a writ of possession to the person claiming adversely to the purchaser at such tax sale, or his assignee.

SEC. 9. That any tract or parcel so sold may be redeemed by the person who owned the same at the time of the forfeiture thereof or his representative or assigns at any time within one year from the time of the sale thereof, upon paying to the treasurer of the county, for the use of the purchaser or his assignee, the amount for which such property sold, with interest on such amount from the day of sale to the time of redemption, at the rate of two per cent. per month. Upon such redemption being made, the treasurer of the county shall give to the person redeeming, a certificate thereof, which may be recorded in the office of the register of deeds of the proper county, and thereupon the same shall operate to defeat such tax deed, so far as said redeemed premises are concerned, and the title acquired by such purchaser or his assignee under the certificate and deed shall revert to such redemptioner.

SEC. 10. That the several counties in this State who have advanced, paid costs or expenses upon any of the tax sales mentioned in the first section of this act, may retain

out of redemption money paid under the provisions of the second section of this act, the proportion of such expenses properly chargeable to the taxes levied for state purposes.

SEC. 11. This act shall take effect and be in force from and after its passage.

Approved March 11th, 1862."

The following is the tax deed introduced by the plaintiff below as sole basis of recovery, against the objections of defendant below.

"Know all men by these presents, that whereas the Treasurer of the County of Ramsey, in the State of Minnesota did on the eleventh day of February, one thousand eight hundred and sixty-three at the County Auditor's office in the city of St. Paul, in said county, in conformity with all the requisitions of the several acts in such case made and provided expose at public sale as forfeited to the State under the provisions of law a certain tract of land described as follows, to wit: Lot number four (4) in block number twenty-eight (28) of Rice & Irvine's addition to St. Paul for the sum of three hundred and thirty-seven and 80-100 dollars being the amount of taxes for the year 1853, 1854, 1855, 1856, 1857, 1859, 1860, 1861, with interests and costs chargeable on said tract of land, and whereas the County Commissioners of said County did previously direct said tract to be sold for an amount less than the taxes and costs due thereon; and whereas at the time and place aforesaid, Anna T. E. Kirtland offered to pay the sum of one hundred and eighty-six and 62-100 dollars for said tract of land, that being the highest price, and she being the highest bidder for the same, and the said Anna T. E. Kirtland has paid the said sum to the treasurer aforesaid and said tract was stricken off to her at that price; and whereas it appears that the certificate of said purchase has not been assigned by

the said Anna T. E. Kirtland to any person; and whereas said property is still unredeemed.

Now therefore, I Wm. H. Forbes, auditor of said Ramsey County, for and in consideration of said sum of one hundred and eighty-six and 62-100 dollars paid to the treasurer of said County at the time of said sale, and by virtue of the statute in such case made and provided have granted bargained and sold, and by these presents do grant, bargain and sell unto the said Anna T. E. Kirtland, her heirs and assigns, the following piece or parcel of land situate in said county to wit; Lot number four (4) in block number twenty-eight (28) of Rice & Irvine's addition to St. Paul, to have and to hold unto her, the said Anna T. E. Kirtland, her heirs and assigns forever; subject however to all the rights of redemption provided by law, and to all unpaid taxes and charges which are a lien thereon.

In witness whereof I, William H. Forbes, auditor as aforesaid, by virtue of the authority aforesaid, have hereunto subscribed my name, and affixed my seal this twelfth day of February, A. D. 1864.

[Official Seal.] W. H. FORBES, [Seal.]

In presence of Auditor of Ramsey County.

ISAAC H. CONWAY,

ALBERT H. MERRICK.

State of Minnesota, County of Ramsey. On this twelfth day of February, A. D. 1864, before me, personally, came William H. Forbes, auditor of the County of Ramsey, and State of Minnesota, to me personally known to be the identical person who executed the foregoing conveyance and acknowledged that he executed the same as his free act and deed.

Witness my hand and official seal the day and year above written.

[Seal Notarial] ISAAC H. CONWAY,
Notary Public.

State of Minnesota, County of Ramsey—ss.

I hereby certify that the within deed was filed in this office for record on the 13th day of February, A. D. 1864, at 12 o'clock m., and was duly recorded in Book C. C. of deeds on pages 582 and 583.

CHARLES PASSAVANT,
Register of Deeds,
Ramsey County.

Plaintiff

POINTS AND AUTHORITIES OF ~~DEFENDANT~~ IN ERROR.

I

The tax deed was not stamped and hence not admissible in evidence, under the act of Congress.

Act of June 30, 1864, *sec.* 151, 13 *Statutes at Large*, 291.

Act of March 3d, 1865, *sec.* 1, 13 *Statute at Large*, 481.

By act of July 13, 1866, 14 *Stat. at large* 141, the law is amended and such instruments are expressly exempted from stamp duty.

II

Said tax deed is void under the laws of Minnesota.

a. It has no witnesses. Two names appear on the deed but not in the avowed character of witnesses as the statute requires.

Section 8, *Chap.* 35, *Compiled Statutes of Minnesota*, provides that "Deeds executed within this territory [State], of lands or any interest in lands therein, shall be executed in the presence of two witnesses, *who shall subscribe their names to the same as such.*

b. The day of sale named in the deed is not the day designated in the Act of 1862, nor is there any recital in the deed from which the Court can see or infer that a general tax sale or a sale of the premises in controversy, was commenced for such designated day, and an adjournment had to the day to on which the sale was made.

For aught that appears this may have been the only lot exposed for sale, under the act of 1862 in St. Paul, and February 11, 1863, the day first designated for such sale to take place.

If the recital is evidence at all, it shows, or tends to show, that the sale was not noticed for the day named in the statute.

Act of 1862, *sects.* 2 *and* 3.

c. It was not shown that the premises in controversey were lands which have been sold for the taxes of 1859, and previous years, prior to March 11, 1862.

Act 1862, *page* 35, *sec.* 1. Nor that said premises *remained unredeemed* on the 1st day of November, 1862.

Act of 1862, *sec.* 2.

d. The tax deed does not show that the County Commissioners directed the said premises to be sold for any specific sum less than thet axes and costs chargeable thereon, nor that the plaintiff below bid the sum for which the County Commissioners had directed a sale.

Act of 1862, *sec.* 3.

Query. Had the County Commissioners alone, any power of abatement in regard to this property?

Act of 1862, *sec* 4, *last clause.*

e. The deed does not show, nor was it shown *aliunde*, that the sale was made under the special act of 1862.

It does show that the sale was made for the tax of certain years not mentioned in that act.

f. The plaintiff below did not show that the land sold had not been redeemed when the tax deed was executed and delivered.

It is only a deed "so made," that is to say, when the land *has not been redeemed* which is declared *prima facie* evidence of title.

General Statutes of Minnesota, chap. 11, *secs.* 139 *and* 140.

Laws of 1860, *chap.* 2, *secs.* 29, 30.

Greve vs. Coffin, 14 *Minn.*, 345.

The tax deed issued under the act of 1862, could only vest in the grantee therein an absolute title, in cases where the tax returned delinquent had not been actually paid.

Therefore the plaintiff below was bound to show that the tax had not been paid before the tax deed could support the declaration.

This was not done, and said deed was incompetent for any purpose.

Act of 1862, *sec.* 5.

Greve vs. Coffin, 14 *Minn.*, 345.

III

The court erred in not permitting the defendant below to show that the provisions of law relating to notice of tax sales had not been complied with.

1. The action was commenced within one year after the tax deed was recorded and rested for support solely upon that deed.

It was therefore competent for the defendant to defeat the action by proof of any fact which would have enabled him to sustain an action to set aside the tax deed, had he brought one within the time limited. At all events it was competent for the party against whom the tax deed was offered to show that it was no deed and hence incompetent to support the action. Neither the letter nor the spirit of the act of 1862, requires that the owner of land sold for taxes and in actual occupation, should, when sued within the year, be driven to his cross action, to reach a result necessarily involved in the suit pending.

If, however, it be held that ejectment is not an action for the purpose of testing the validity of tax sales, and so not within the provisions of section 7 of the act of 1862, then we insist that it is not an action in which the limitation clause of that section can be invoked, and hence the evidence was proper.

It is doubtful, we think, in view of the language used in sects. 6 and 7, whether the latter section can be held to apply to the case of an original owner in possession before the tax sale, but, however this may be, it seems clear that the bar of the section can only extend to the bringing of the action specifically named therein.

"Forever barred in the premises" means barred from bringing an action to test the validity of the tax sale. This interpretation gives force to the statute according to its terms, and this is all that can be required. Even cases within the reason but not within the words of a statute are not barred,

but may be considered as omitted cases, which the Legislature did not deem proper to limit.

Hugh vs. Shelby, 11 *Ill.*, 9.

Beedell vs. Jenney, 5 *Gilman*, 207.

2. The limitation clause in sec. 7 of the act of 1862, as applied to actions of ejectment, is unconstitutional and void.

The owner of the premises in controversey had been in actual occupation and full enjoyment of her property for years prior to the commencement of this action, and was still in such possession and enjoyment through her tenant, when such action was commenced. She had no occasion to defend her right of possession or of property, for neither had been invaded. No one had made entry upon her premises against her will, or taken any proceeding, in which she was a party, to disturb her in the full and complete enjoyment of her property. When, therefore, this action of ejectment was commenced by a non-resident claiming legal title to her property, the first lawful imperative call was made upon her to protect her rights. Under these circumstances it would be strange indeed, if she had not the right to be heard in her defence, and to show, if she could, that her title to her property had not been divested.

The court below held that, inasmuch as she had not brought an action to test the validity of the tax sale within one year from the recording of the tax deed, she was barred and the plaintiff's title was perfect.

The correctness of this ruling depends upon the construction to be given to section 7 of the act of 1862.

We are saved the necessity of an extended examination of the subject by the fact that the Supreme Court of the State of Minnesota has held the act, as applied to actions of ejectment, to be in contravention of the constitution of the State and without force.

Baker vs. Kelley, 11 *Minn.*, 480.

We refer to the opinion of Chief Justice Wilson in this case as a clear exposition of the scope and meaning of the act of 1862, and as decisive of the principal question raised upon the record here.

"The construction given to a statute of a State by the highest judicial tribunal of such State is regarded as a part of the statute, and is as binding upon the courts of the United States as the text."

Mr. Justice Swayne in *Leffingwell vs. Warren*, 2 *Black.*, 599, *citing Shelby vs. Guy*, 11 *Wheat.*, 351; *McCluny vs. Silliman*, 3 *Pet.*, 270: *Greene vs. McNeil's Lessee*, 6 *Pet.*, 291; *Ross vs. Duval*, 13 *Pet.*, 45; *Massingall vs. Downs*, 1 *How.*, 767; *Nesmith vs. Sheldon*, 1 *How.*, 812; *Van Rensselaer vs. Kearney*, 11 *How.*, 297; *Webster vs. Cooper*, 14 *How.*, 504.

"If the highest judicial tribunal of a State adopt new views as to the proper construction of such a statute and reverse its former decisions, this court will follow the latest settled adjudications."

Ib. United States vs. Morrison, 4 *Pet.*, 124; *Green vs McNeil's Lessee*, 6 *Pet.*, 291.

IV.

While it is the general policy of the State to encourage parties to bid at tax sales and become purchasers of delinquent lands, and proper safeguards have been thrown around the proceedings for that purpose, yet it is equally true that the Legislature has had in view the great probability of error in such proceedings and that some provision should be made for such errors. Accordingly we find the following, in the laws of 1861, page 34, section 6, amending the act of 1860, section 32.

"Upon the sale of any land or town lot, for delinquent taxes, the lien which the State has thereon for taxes then due shall be transferred to the purchaser at such sale, and if such sale should prove to be invalid on account of any irregularity in the proceedings of any officer having any duty to perform in relation thereto, the purchaser at such sale shall be entitled to receive from the proprietor of such land or lot, the amount of taxes and penalty and interest legally due thereon by the purchaser subsequent to such sale; and such land or lot shall be bound for the payment thereof."

Substantially the same provision is contained in the General Statutes, chapter 11, section 155.

JOHN B. BRISBIN,
E. C. PALMER,
Of Counsel for Plaintiff in Error.

Evening Post Steam Presses, 41 Nassau Street, cor. Liberty, N. Y.

Supreme Court

OF THE UNITED STATES.

THADDEUS WILLIAMS,
Plaintiff in Error,

vs.

ANNA T. E. KIRKLAND,
Defendant in Error.

Points for Defendant.

This was an action of ejectment, commenced in April, 1864.

The action was first tried in October, 1865, by a jury, and resulted in a verdict for the defendant in error.

In October, 1865, the plaintiff in error settled a bill of exceptions, which will be found at pages 5, 6 and 7 of the record.

In June, 1866, the plaintiff in error (instead of proceeding with his appeal) demanded another trial (page 9).

On the second trial a jury was waived, by consent of the parties, and the cause was tried before the Court in June, 1866, and resulted in a judgment for the defendant in error.

On the 31st of July, 1866, the plaintiff in error settled and filed another bill of exceptions.

The record, therefore, presents the record of two judgments in favor of the defendant in error, brought here on two distinct bills of exceptions on two distinct trials.

I.

The plaintiff in error, by demanding a second trial under the statute, in June, 1866, waived his bill of exceptions, filed in 1865, and the exceptions there taken are not the subject of review.

II.

If the first bill of exceptions was waived for the reasons stated, then we say that there is no question of law raised by the second bill of exceptions.

The objections, on page 9, to the admission of the deed in evidence, were not well taken.

The objection that there does not appear to have ever been any revenue stamp on the deed or certificate, is not well taken. This was one of the regular proceedings to support the government of the State of Minnesota, and not the subject of taxation by the Federal Government.

The deed *does* purport to have been executed before two witnesses. (Fol. 25.)

The other objections are covered by the law of Minnesota, which provides that the deed shall be *prima facia* evidence that the law has been complied with.

The case was tried by the Court, and the admission of the evidence, if improper, is not the subject of exception.

Arthurs *vs.* Hart, 17 How., 6.

The deed is made by statute *prima facia* evidence of the regularity of all prior proceedings.

Baker *vs.* Kelly, 11 Min., 480.

The first exception was not well taken. The defendant called as a witness the treasurer of Ramsey Co., "and offered *to prove that the notice of sale was insufficient.*"

This offer was objected to on the ground that it was incompetent and immaterial.

The offer was not to prove any distinct *fact*, but to prove a conclusion of law. This was certainly incompetent and was properly excluded. The deed being by statute made *prima facia* evidence of the regularity of all proceedings, the offer to invalidate it should have been to prove some *fact*. An offer to prove what seems to have been a conclusion of law, and not a fact, was properly excluded.

III.

If the first bill of exceptions is the subject of review here, it presents the question whether Sections 5 and 7 of the Act of 1862, are unconstitutional as decided in

Baker *vs.* Kelly, 11 Minn. Rep., p. 480.

This question was first raised and decided in the Federal Courts in this case in 1864, before the decision in 11 Min., between a citizen of the State of New York and a citizen of Minnesota, hence this Court will not feel bound by that decision.

Pease *vs.* Peck, 18 How., 599.
Rowen *vs.* Runnels, 5 How., 139.
Butz *vs.* City of Muscatine, 8 Wallace, 575.

An examination of the case of Baker agst. Kelly, we think fails to show any provision of the Constitution of Minnesota, which sections 5 or 7 of the Act of 1862 violate.

How it deprives a party of his "remedy," except as

all parties are necessarily deprived of their remedy by any statute of limitation, is not disclosed.

The same reason that would make a statute of limitation for one year invalid, would invalidate one for five years, and indeed would invalidate all statutes of limitation. Whether the defendant is in possession of his property or out of possession, he knows that his taxes are not paid, and that his property is sold, and the title given to another party, and that he has but one year in which to bring an action to reclaim his title after the deed of the purchaser is recorded. This certainly ought not to be a reason for declaring the statute unconstitutional.

A careful examination of this case, and the points there made, will show that it ought not to be sustained.

IV.

We ask that the judgment of the Circuit Court be affirmed, with costs.

IRA D. WARREN,
Counsel for Deft. in Error.